
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

GARY WASHINGTON RUCKER,
Plaintiff,

v.

CHASE SWENSEN and KAI SAFSTEN,
Defendants.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Case No. 1:15-cv-00054-JNP

District Judge Jill N. Parrish

Before the court is a Report and Recommendation prepared by Magistrate Judge Oberg. ECF No. 85. On December 13, 2021, defendants Chase Swensen and Kai Safsten moved the court for summary judgment against plaintiff Gary Washington Rucker. ECF No. 80 In her Report and Recommendation, Judge Oberg recommends granting Defendants' motion for summary judgment. Specifically, Judge Oberg recommends granting Defendants' motion "to the extent it seeks dismissal for failure to prosecute and failure to comply with the court's orders." ECF No. 85, at 2. Judge Oberg notified the parties that a failure to timely object to her recommendation could constitute a waiver of further objection.

No party filed an objection. However, Defendants filed a "Response" to Judge Oberg's Report and Recommendation. ECF No. 86. Defendants concur with Judge Oberg's recommendation that the court dismiss Rucker's complaint for failure to prosecute. However, Defendants "request that the Court also grant their Motion for Summary Judgment on the merits." *Id.* at 2.

But Defendants themselves moved the court to dismiss Rucker's case for failure to prosecute under Federal Rule of Civil Procedure 41(b) as part of their motion for summary judgment. Specifically, Defendants argued that "Plaintiff has failed to prosecute his claim and this matter should be dismissed with prejudice as a result of Plaintiff's failure to comply with discovery requests and court orders." ECF No. 80, at 18. And the court need not rule on all the bases provided in a motion when ruling on one basis renders the remaining arguments moot. Here, the magistrate judge determined—and this court agrees—that the court should dismiss the action for failure to prosecute, just as Defendants requested. Because dismissing the case for failure to prosecute renders the remaining arguments in Defendants' motion for summary judgment moot, the court need not address those arguments here.

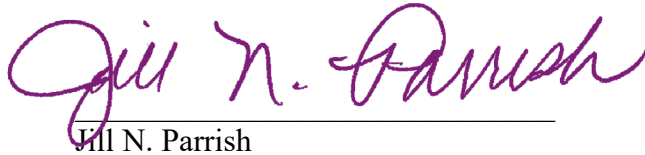
Moreover, Rule 41(b) provides that "[u]nless the dismissal order states otherwise, a dismissal under this subdivision (b) . . . operates as an adjudication on the merits." *See also Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 506 (2001) ("[T]he effect of the 'adjudication upon the merits' default provision of Rule 41(b) . . . is simply that, unlike a dismissal 'without prejudice,' the dismissal in the present case barred refiling of the same claim in the [same] United States District Court."). Therefore, to the extent Defendants seek an adjudication on the merits, Judge Oberg's recommendation, and this order adopting that recommendation, fulfills Defendants' request. Accordingly, the court overrules Defendants' response.

The court orders as follows:

1. The Report and Recommendation (ECF No. 85) is ADOPTED IN FULL.
2. Defendants' Motion for Summary Judgment (ECF No. 80) is GRANTED.
3. The above-captioned case is DISMISSED WITH PREJUDICE.

DATED March 31, 2022.

BY THE COURT

A handwritten signature in purple ink, reading "Jill N. Parrish", is written over a horizontal line.

Jill N. Parrish
United States District Court Judge